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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/594,942	09/28/2006	Paul Omdoll	1414.093	5667
23598 7590 03/29/2011 BOYLE FREDRICKSON S.C. 840 North Plankinton Avenue MILWAUKEE, WI 53203				
EXAMINER RAHIM, AZIM				
ART UNIT 3784		PAPER NUMBER		
NOTIFICATION DATE 03/29/2011		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@boylefred.com

Office Action Summary

Application No.

10/594,942

Applicant(s)

OMDOLL ET AL.

Examiner

AZIM RAHIM

Art Unit

3784

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,6-10,13,14 and 18-21 is/are pending in the application.
- 4a) Of the above claim(s) 7,15 and 21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,6,8-10,13,14 and 18-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

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DETAILED ACTION

Election/Restrictions

1. Claims 7, 15 and 21 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claims 7 and 15 are directed to the non-elected species as indicated by the Applicant in the response dated 9/16/2008, and claim 21 includes structure not disclosed in the specification or the drawings directed to the elected species.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 7, 15 and 21 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 18-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Miller, JR. et al. (Miller, US 20030173363).

Regarding claim 18, Miller discloses a container (referring to figures 7 & 8) comprising: a body (101) having at least a partially hollow interior (illustrated in figure 7), wherein the body has a lower section and an upper section (cover 103) and wherein the lower section (body 101 is situated as a lower section) includes a bottom surface (41) for supporting the device in a standing position (illustrated in figures 7 & 8); a mouth (129) formed in the lower section of the body (illustrated in figure 8), and providing access to the hollow interior of the body (illustrated in figures 7 & 8), wherein the mouth defines a first opening to the hollow interior of the body when the upper section is disengaged from the lower section (illustrated in figure 8), and wherein the mouth is positioned such that as the hollow interior of the lower section is filled with fluid, fluid will initially remain below the upper section when the upper section is engaged with the lower section (the container is capable of performing this functional limitation), and wherein the mouth has an upper edge (55) bounding the first opening (illustrated in figure 8) and the upper section has a lower edge (125) bounding a second opening (interior of 123) and wherein the first opening and the second opening are of substantially the same diameter (illustrated in figure 8); and a handle (13) formed in the upper section of the body (illustrated in figure 8), wherein the handle has a generally upright orientation defined orthogonal to the bottom surface of the lower section (illustrated in figure 8).

Regarding claim 19, the functional limitation “wherein during use the lower section of the body is submerged in the warm material and the upper section, including the handle, are in a raised position relative to the warm material so that the handle may be grasped by a hand without the hand contacting the warm material” is capable of being performed, and provides no patentable distinction from the prior art.

Regarding claim 20, Taylor discloses that the mouth is defined along a plane that is parallel to that of the bottom surface of the lower section (illustrated in figure 8).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
5. Claims 1-3 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor.

Regarding claim 1, Taylor discloses a device (referring to figures 1-3) comprising: a body (12) having a base (32) extending along a first horizontal plane (illustrated in figure 2), a wall (22) extending upwardly along a vertical plane from the base (illustrated in figure 2), a top (36) extending along a second horizontal plane (illustrated in figure 2) connected to the wall above the base (illustrated in figure 2), wherein the base, wall and top define a hollow interior (illustrated in figure 3); a mouth (34 & 40) disposed on the top of the body and providing access to the hollow interior (illustrated in figure 2), wherein an opening of the mouth (the interior of

the mouth) defines a third horizontal plane (illustrated in figure 2) that is parallel to the first and second horizontal planes (illustrated in figure 2), and wherein the opening defines a maximum fill level (inherent); a cover (14) coupled to the mouth (illustrated in figure 3: indirectly coupled) having a hollow interior defining an expansion volume (the interior of the cover would define an expansion volume) that is fluidly connected to the hollow interior of the body when the cover is engaged with the mouth (illustrated in figure 2), wherein the expansion volume would not be filled with liquid when the hollow interior is filled to the maximum level (Taylor's device is capable of performing this intended use function), and when liquid only may be removed from the hollow interior of the body when the cover is disengaged from the mouth (illustrated in figure 2). It is noted that the intended use limitation "adapted to close the mouth" is capable of being performed, and provides no patentable distinction from the prior art. However, Taylor fails to disclose a series of sidewalls. The general concept of designing the sidewalls of a liquid container to be square or rectangular falls within the realm of common knowledge as obvious mechanical expedient, and one having ordinary skill in the art would have been motivated to include the use of a series of vertical sidewalls in order to prevent the container from rolling if placed on it's side.

Regarding claim 2, Taylor discloses that the device cannot be overfilled (see the rejection of claim 1 regarding the expansion volume).

Regarding claim 3, Taylor discloses that the mouth is sized to accommodate ice cubes (this functional limitation is capable of being performed, and provides no patentable distinction from the prior art.)

Regarding claim 6, Taylor discloses a hanger (upper portion of element 14).

6. Claims 8-10, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor et al. (Taylor, GB 2,098,958) in view of Churan (US 3,804,289).

Regarding claim 8, Taylor discloses a device (referring to figures 1-3) comprising: a body (12) having a base (32), a top (36), wherein the body defines a hollow interior (illustrated in figure 3); a mouth (34 & 40) disposed on the top of the body and providing access to the hollow interior (illustrated in figure 2), wherein the mouth defines an opening (the interior of the mouth), and wherein the opening defines a maximum fill level (inherent); a cover (14) having a hollow interior defining an expansion volume (the interior of the cover would define an expansion volume) that is fluidly connected to the hollow interior of the body when the cover is engaged with the mouth (illustrated in figure 2), and when liquid only may be removed from the hollow interior of the body when the cover is disengaged from the mouth (illustrated in figure 2); and wherein the hollow area of the cover is at least 10% larger in total volume than that of the hollow interior of body (illustrated in figure 2). It is noted that this device is capable of being filled with a liquid and placed in a freezing device. It is noted that the intended use or functional limitations “shaped to provide an enlarged surface area” and “to provide for expansion of liquid from within the body through the mouth and into the hollow area of the cover when said body is filled with a cooling substance and then frozen or otherwise exposed to an environment that causes the cooling substance with which said body is filled to expand” are capable of being performed, and provides no patentable distinction from the prior art. However, Taylor fails to disclose that the cover includes a gasket. The general concept of providing a gasket for a cover for a container falls within the realm of common knowledge as obvious mechanical expedient

and is illustrated by Churan (column 4, lines 38-43) which teaches a gasket (30) that is disposed between a cover (11) and a container (10), and one having ordinary skill in the art would have been motivated to include the use of a gasket in order to prevent fluid within the device from leaking out of the device.

Regarding claim 9, Taylor discloses that the device cannot be overfilled (see the rejection of claim 8 regarding the expansion volume).

Regarding claim 10, Taylor discloses that the mouth is sized to accommodate ice cubes (this functional limitation is capable of being performed, and provides no patentable distinction from the prior art.)

Regarding claims 13 & 14, Taylor discloses a hanger (upper portion of cover 14) being part of the cover (illustrated in figure 2).

Response to Arguments

7. Applicant's arguments with respect to claims 8-10, 13, 14 and 18-20 have been considered but are moot in view of the new ground(s) of rejection.

On pages 8-10 of the applicant's remarks, the applicant presents the following arguments:

(a) As such, Applicant submits that the Examiner has failed to establish any basis for considering the valve cap 14 and the storage cap 30 as a single structure. The reference does not show the two caps as being integrally formed with or otherwise connected to one another. As noted above, for the bottle of Taylor et al. to work as intended, the storage cap 30 must be removable from the bottle 12 without removing the valve cap 14. Moreover, it is the valve cap 14 that seals the bottle 12. The storage cap 30 does not perform this function and one of skill in

the art would not expect it to so function given the device's design. Indeed, without the benefit of hindsight reconstruction, it strains credulity to suggest that one skilled in the art would take a liquid soap dispenser consistent with that described in the reference and modify it to create a chilling device having a cap with an integral expansion volume.

(b) For the construction proposed by the Examiner to work, significant changes would need to be made to the dispenser described by Taylor et al. For instance, Taylor et al. teaches that when the dispenser is in use, the storage cap is attached to the bottom of the bottle. If the valve cap were coupled to the storage cap, moving the storage cap to the in-use position would leave the opening of the bottle exposed and when the bottle is hung using the hanger of the storage cap, fluid would flow freely out of the bottle. Moreover, there is no recess or any other structure to permit the valve cap and the storage cap to be paired together such that the storage cap can be snap-fit onto the bottle. In short, there is no support in the reference whatsoever to support the Examiner's position that the storage cap and the valve cap are, or could be, a single structure.

(c) Claim 1 has been amended to call for a valve-less cover that closes the mouth of the body. As discussed above, and to the extent that the valve cap and the storage cap can be considered a single cap for closing the opening of the bottle, it is clear that Taylor et al. teaches a cover having a valve.

In response to the aforementioned arguments, the Examiner respectfully disagrees.

In response to arguments (a) & (b), in the rejections of any of the claims, the Examiner has interpreted cover to be storage cap 14 of Taylor, not the combination of valve cap 30 and storage cap 14. With regard to the function of the storage cap, the storage cap is capable of closing the device of Taylor. In addition, the Examiner has not employed hindsight

reconstruction of the instant invention, but rather shows that the structure of Taylor teaches most of the claimed invention.

In response to argument (c), in the rejection of claim 1, the cover has been interpreted by the Examiner as storage cap 14. Storage cap 14 is shown to be a valve-less cover in figure 2 of Taylor.

In conclusion, for at least the reasons stated above, the Examiner respectfully submits that the rejections of the rejected claims are properly upheld.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AZIM RAHIM whose telephone number is (571) 270-1998. The examiner can normally be reached on Monday - Thursday 7am - 3pm EST and Friday 7am - 9:30am EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frantz Jules can be reached on 571-272-6681. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. R./
Examiner, Art Unit 3744
3/20/2011

/Frantz F. Jules/
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3744